

REMARKS

Claims 1, 7, 13, 15, 17-22, 26-29, 32-34 have been amended. No new matter has been added. Support for the amendments may be found throughout the specification, for example in Examples 6-9, p.6, lines 21-24, p. 7, lines 1-3, p. 9, lines 11-12, p. 10, lines 1-2, and in the originally filed claims. Claims 4-6, 10-12, 23, 30-31 and 35-43 have been cancelled without prejudice. Applicants reserve the right to prosecute the subject matter of those claims in a continuing application at a later date. New claims 44-47 have been added. No new matter has been added. Support for the new claims may be found throughout the specification, for example, at p. 5, lines 30-31, p. 32, lines 4 and 15-22, p. 37, line 18 to p. 38, line 11 and in the originally filed claims.

Applicants thank the Examiner for comments on the previous Restriction Requirement and the Information Disclosure Statement.

Claims 1-3, 7-9, 13-22, 24, 26-29, 32-34 and 44-47 are currently pending.

SPECIFICATION

The Examiner has objected to the specification and has requested that the trademarks be capitalized wherever it appears. See Office Action at p. 3. Applicants have amended p. 44 and 50-51 and capitalized the trademarks wherever they appear. Applicants respectfully request the withdrawal of the objection.

CLAIM OBJECTION

The Examiner has objected claims 24, 26, 33 and 34 as the Examiner contends that those claims recite non-elected inventions. See Office Action at p. 3. Claims 24, 26, 33 and 34 were part of Group I in the Examiner's Restriction Requirement which included claims 1-22, 24, 26-29 and 32-34 drawn to a composition for consumption. Since Applicants elected Group I and the species *Lactobacillus sake* strain 570 for examination and independent claim 1 has been amended to include the phrase "wherein said micro-organism is *Lactobacillus sake* strain 570," claims 24, 26, 33 and 34 also read on the elected species as those claims depend from independent claim 1. Claims 24, 26, 33 and 34 therefore should be examined. Applicants respectfully request that the Examiner withdraw this objection.

CLAIM REJECTION

Rejection of claims under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 1-9, 15-22, 24, 26-29 and 32-34 under 35 U.S.C. § 112, second paragraph as being indefinite. See Office Action at p. 4. Claims 4-6 have been cancelled without prejudice thus rendering this rejection moot with respect to those claims.

Not in acquiescence to the rejection but in an effort to expedite prosecution, claims 1-3, 7-9, 15-22, 24, 26-29 and 32-34 have been amended to specify that the microorganism is *Lactobacillus sakei* strain 570. Applicants believe that claims 1-9, 15-22, 24, 26-29 and 32-34 are clear and definite and respectfully request reconsideration and withdrawal of this rejection.

The Examiner has additionally rejected claim 17 under 35 U.S.C. § 112, second paragraph as being vague and indefinite as claim 17 recites the phrase "organoleptic properties." See Office Action at p. 4. Applicants attach an extract from a dictionary (see Appendix A) showing that the term "organoleptic" refers to the taste, color, odor or feel of a substance such as food. A skilled person, on reading the application as a whole, would have readily considered that the term "organoleptic properties" in claim 17 referred to an improvement in one or more of the taste, color, odor and feel of the food product caused by the use of EPS as a food ingredient. Applicants respectfully request the reconsideration and the withdrawal of this rejection with respect to claim 17.

Rejection of claims under 35 U.S.C. § 101

The Examiner has rejected claims 1, 3-9, 15-17 and 19-20 as being drawn to a product of nature. See Office Action at p. 4. Claims 4-6 have been cancelled without prejudice thus rendering this rejection moot with respect to those claims. Claims 3, 7-9, 15-17 and 19-20 depend from independent claim 1. Claim 1 has been amended to include the phrase "wherein the micro-organism is *Lactobacillus sakei* strain 570." The present application is the first time that the isolated *Lactobacillus sakei* strain 570 has been described and as such, claim 1 and dependent claims thereof do not read on a product of nature. Applicants respectfully request the reconsideration and withdrawal of this rejection.

Rejection of claims under 35 U.S.C. § 102

Van Den Berg

The Examiner has rejected claims 1, 2, 4-6, 15-21, 24, 26, 27, 29 and 32-34 under 35 U.S.C. § 102(b) as being anticipated by WO 94/12656 to Van Den Berg et al. ("Van Den Berg"). See Office Action at p. 5. Not in acquiescence to the rejection but in an effort to expedite prosecution, claims 4-6 have been cancelled thus rendering this rejection moot with respect to those claims. Claims 2, 15-21, 24, 26, 27, 29 and 32-34 depend from independent claim 1.

Independent claim 1 relates to a composition for consumption, the composition including a viable lactic acid micro-organism, an enzyme synthesised by the micro-organism and an exopolysaccharide (EPS) product of the enzyme wherein the micro-organism is *Lactobacillus sakei* strain 570.

Van Den Berg describes "[n]ew *Lactobacillus sake* like strains" that are obtained from meat products. See Abstract. Specifically, Van Den Berg describes that "[a] preferred strain is the *Lactobacillus sake* like strain O-1, deposited as CBS 532.92." See p. 3, lines 20-22. Van Den Berg does not teach a composition for consumption, the composition including an isolated viable lactic acid micro-organism, an enzyme synthesised by the micro-organism and an exopolysaccharide (EPS) product of the enzyme wherein the micro-organism is *Lactobacillus sakei* strain 570.

Accordingly, independent claim 1 is not anticipated by Van Den Berg. Claims 2, 15-21, 24, 26, 27, 29 and 32-34 depend from claim 1 and are also not anticipated by Van Den Berg for at least the reasons described above. Applicants respectfully request reconsideration and withdrawal of this rejection.

Geel-Schutten

The Examiner has rejected claims 1-4, 15-20, 24, 26 and 32 under 35 U.S.C. § 102(b) as being anticipated by Geel-Schutten et al., (*Appl Microbiol Biotechnol.*, Vol. 50, p. 697-703 (1998)) ("Geel Schutten"). See Office Action at p. 7. Not in acquiescence to the rejection but in an effort to expedite prosecution, claim 4 has been cancelled thus rendering this rejection moot with respect to those claims. Claims 2-3, 15-20, 24, 26 and 32 depend from independent claim 1.

Geel-Schutten describes screening 182 *Lactobacillus* strains for the production of EPS. See Abstract. Geel-Schutten identifies some of these *Lactobacillus* strains in Table 1 and strains LB 121 and LB 180. See Table 1 and p. 699. Geel-Schutten does not teach a composition for consumption, the composition including a viable lactic acid micro-organism, an enzyme

synthesised by the micro-organism and an exopolysaccharide (EPS) product of the enzyme wherein the micro-organism is *Lactobacillus sakei* strain 570.

Accordingly, independent claim 1 is not anticipated by Geel-Schutten. Claims 2-3, 15-20, 24, 26 and 32 depend from claim 1 and are also not anticipated by Geel-Schutten for at least the reasons described above. Applicants respectfully request reconsideration and withdrawal of this rejection.

Rejection of claims under 35 U.S.C. § 103

The Examiner has rejected claims 1-9, 15-22, 24, 26-29 and 32-34 under 35 U.S.C. § 103(a) as being unpatentable over Geel-Schutten and further in view of Van Den Berg. See Office Action at p. 10. Not in acquiescence to the rejection but in an effort to expedite prosecution, claims 4-6 have been cancelled thus rendering this rejection moot with respect to those claims. Claims -9, 15-22, 24, 26-29 and 32-34 depend from independent claim 1.

As previously described, Geel-Schutten and Van Den Berg do not teach a composition for consumption, the composition including a viable lactic acid micro-organism, an enzyme synthesised by the micro-organism and an exopolysaccharide (EPS) product of the enzyme wherein the micro-organism is *Lactobacillus sakei* strain 570. Geel-Schutten and Van Den Berg do not suggest a composition for consumption, the composition including a viable lactic acid micro-organism, an enzyme synthesised by the micro-organism and an exopolysaccharide (EPS) product of the enzyme wherein the micro-organism is *Lactobacillus sakei* strain 570 either.

Accordingly, claim 1 and claims that depend therefrom are patentable over the combination of Geel-Schutten and Van Den Berg for at least the reasons discussed above. Applicants request that this rejection be reconsidered and withdrawn.

Patentability of new claims 44-47

New claims 44-47 depend from independent claim 1. As previously discussed, none of the above-mentioned references teach or suggest a composition as described in claim 1. As such, new claims 44-47 are patentable for at least the reasons described above.

CONCLUSION

Applicant : Schlothauer et al.
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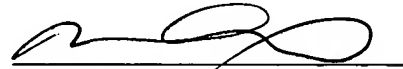
Attorney's Docket No.: 14923.0024

For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the pending rejections. Applicants believe that the claims now pending are in condition for allowance. A petition for a one-month extension of time is attached.

Should any fees be required by the present Amendment, the Commissioner is hereby authorized to charge Deposit Account **19-4293**.

Respectfully submitted,

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APPENDIX A



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organoleptic

One entry found.

organoleptic

Main Entry: **or-gan-o-lep-tic** 

Pronunciation: \,ôr-gə-nō-'lep-tik, ôr-gə-nə-\

Function: *adjective*

Etymology: French *organoleptique*, from *organ-* + Greek *lēptikos* disposed to take, from *lambanein* to take — more at LATCH

Date: 1852

1 : being, affecting, or relating to qualities (as taste, color, odor, and feel) of a substance (as a food or drug) that stimulate the sense organs <*organoleptic* research>

2 : involving use of the sense organs <*organoleptic* evaluation of foods>

— **or-gan-o-lep-ti-cal-ly**  \-ti-k(ə-)lē\ *adverb*

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MLA Style

"organoleptic." *Merriam-Webster Online Dictionary*. 2008.

Merriam-Webster Online. 13 August 2008

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APA Style

organoleptic. (2008). In *Merriam-Webster Online Dictionary*.

Retrieved August 13, 2008, from <http://www.merriam-webster.com/dictionary/organoleptic>

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